

## **Exhibit 18**

**to the Declaration of Johanna Schmitt, Esq.  
in Support of Plaintiffs' Opposition to  
Defendant's Motion for Summary Judgment**

**From:** Jeffrey C. Neu, Esq. <jneu@jeffreynneu.com>  
**To:** Desiree Golen <desiree.golen@gmail.com>  
**Sent:** 11/12/2008 9:58:02 AM  
**Subject:** Re: Fwd: Referral From EFF

Sounds good.

Jeff  
Sent via BlackBerry

-----Original Message-----

From: "Desiree Golen" <desiree.golen@gmail.com>

Date: Wed, 12 Nov 2008 04:32:58

To: Jeffrey C. Neu, Esq<jneu@jeffreynneu.com>

Subject: Re: Fwd: Referral From EFF

Dear Jeff,

Sorry, 4:00 pm your time. If it works for you. Please let me know,

Thanks again,

Desiree

On Wed, Nov 12, 2008 at 4:22 AM, Jeffrey C. Neu, Esq  
<jneu@jeffreynneu.com> wrote:

> 4pm my time or yours?

>

> And no, Borland doesn't apply really to this situation, which I'll explain  
> on the call.

>

> Cheers,

> Jeff

>

> Desiree Golen wrote:

>

> Hi Jeff,

>

> Great. How does Friday at 4:00pm work for you?

>

> Also, I wanted to update you on some new information I just received  
> from Todd Bilsborrow, the developer of the Tetromino iPhone game,  
> Kafablo.

>

> Apparently when he replied to the Tetris Company, asking for more  
> information on their copyright, they referred him to this link:  
> <http://www.faq.s.org/rulings/rulings2002HQ471487.html>.

>

> I am curious: Do the results of the Lotus Development Corporation v.  
> Borland International, Inc. case at all trump the "similarity and  
> likeness of the imagery on a copyright claim"?

>

> Thank you for you time,

>

> I look forward to speaking with you,

>

> Desiree

>

>

> On Wed, Nov 12, 2008 at 3:45 AM, Jeffrey C. Neu, Esq  
> <jneu@jeffreynneu.com> wrote:

>

>  
> Hi Desiree,  
>  
> Wed. or Friday works for me. If Friday is best, let's chat then. Take note  
> before we chat that the claimed infringement is going to be not in regards  
> to not just the actual game, but the  
>  
> Cheers,  
> Jeff  
>  
> Desiree Golen wrote:  
>  
> Dear Jeff,  
>  
> No Problem. Attached you will find two screen shots of TetraNet.  
>  
> Please let me know when you are available for a conference call.  
> Wednesday after 1:00 pm (your time) is good for me, but Friday after  
> 1:00 pm is best.  
>  
> Thanks,  
>  
> Desiree Golen  
>  
>  
> On Mon, Nov 10, 2008 at 4:26 PM, Jeffrey C. Neu, Esq  
> <jneu@jeffreynneu.com> wrote:  
>  
>  
> Hi Desiree,  
>  
> I have looked over a bit of the docs. The screen shots are going to be very  
> indicative of where you stand. When you get a chance forward those over and  
> then let's plan a conference call.  
>  
> Cheers,  
> Jeff  
>  
> Jeffrey C. Neu, Esq.  
> J. C. Neu and Associates  
> 318 Newman Springs Road  
> Red Bank, New Jersey 07701  
> (732) 978-4053  
> www.jeffreynneu.com  
>  
>  
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> any loss or damage arising in any way from its use.  
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>  
>  
> Desiree Golen wrote:  
>  
> Dear Jeff,  
>  
> Thank you so much for your quick response. I am very excited to  
> finally get some answers to my questions.  
>  
> I am currently in the process of developing a Tetromino game  
> (<http://en.wikipedia.org/wiki/Tetromino>) with multi-player  
> capabilities and new added features such as special keys, called  
> TetraNet.  
>

> I have been following the Tetris story for the last few weeks and have  
> learned a lot about patents, copyrighted materials, and trademark.  
>  
> As far as I know, and this is why I am requesting counsel, The Tetris  
> Company LLC has no patent on the game concept of Tetris. Furthermore,  
> my understanding of copyright in a programming context is as follows:  
> it is certainly a copyright infringement to steal a developer's  
> codebase without permission and SELL his/her product. However, unless  
> a concept is patented, it is perfectly legal to create the "same"  
> application from the ground up. By "same", I mean an application with  
> identical features, NOT an application produced through stolen code.  
>  
> The code for TetraNet is native. We did not somehow get our hands on  
> the the Tetris Company's code for their iPhone application and paste  
> it into Xcode. (To answer one of your questions, TetraNet is written  
> in Objective C in Xcode, available in Apple's SDK).  
>  
> Moreover, as far as I know, "Tetris", or more correctly put,  
> "Tetromino" is not a patented game. It was first created in Russia  
> under the Soviet Union. Because private ownership was not an option,  
> the developers of the original Tetromino game never claimed a patent.  
> By the time Tetris (what it was later called) became popular in other  
> countries including Japan, private game companies could not claim a  
> patent because Tetromino was already widely popular and available in  
> Russia.  
>  
> Despite all of this, Henk Rogers and his legal hounds have (over the  
> last 15 or so years) been scavenging the Internet and terrorizing  
> individual game developers (who use their own code, graphics, and  
> music to develop and extend on the original Tetris) only to shut them  
> down and steal their ideas.  
>  
> In the last few months, The Tetris Company has attacked various iPhone  
> developers who have attempted to compete with Tetris' buggy and  
> overpriced application on the iPhone mobile platform.  
>  
> I have corresponded with Noah Witherspoon, the developer of Tris, who  
> sent me a transcript of the Cease and Desist letter he received from  
> the Tetris Company LLC. (see attached for file)  
>  
> The developers of Teto Teto, Touchris, Shaker, and Kafablo received  
> similar letters. Unfortunately, each developer was legally (and  
> financially) unprepared to contradict the Tetris Company's claims of  
> infringement with any legal backing. So, Apple, choosing to avoid any  
> legal entanglement, submitted to The Tetris Company's request and  
> terminated each application, one after another. (Attached is Noah's  
> correspondence with Apple on the issue)  
>  
> Here is my question for you: does the Tetris Company have any valid  
> claim to take action under the United States Copyright law? It seems  
> to me that the Tetris Company is using the term "copyright" and "copy"  
> incorrectly to bully third party developers (and apple) into removing  
> their work from the appstore unjustly.  
>  
> Tetris is my favorite game! I have been experimenting with new  
> concepts for TetraNet, but I first would like to ensure that I fully  
> understand the legal issues surrounding this controversy before I  
> release my application. I would also like to draft an appropriate  
> response to the C&D employed by the Tetris Company LLC.  
>  
> Below are some links that I found helpful:  
> [http://everything2.com/index.pl?node\\_id=776131](http://everything2.com/index.pl?node_id=776131)  
> [http://abednarz.net/wp/?option=com\\_content&task=view&id=13&Itemid=45](http://abednarz.net/wp/?option=com_content&task=view&id=13&Itemid=45)  
> (Kafablo)  
> <http://www.whatsoniphone.com/node/5618> (Shaker)  
> [http://www.macworld.com/article/135200/2008/08/iphone\\_tetris.htm/](http://www.macworld.com/article/135200/2008/08/iphone_tetris.htm/) (tris)  
>  
> Also, to answer some more of your questions:

>  
> 1) Name: TetraNet. Tetra=greek derivative of four; Net=implying a  
> social gaming network. (I.e two player and multiplayer capabilities)  
>  
> 2) Description: TetraNet is a puzzle game which consist of arranging  
> Tetrominos on a screen in order to clear rows. Additional features  
> include network play and "special keys". When you clear a row that  
> contains a "special key" embedded in a Tetromino piece, a function is  
> called: "C" for example clears your opponent's board. "S" switched  
> boards. "X" scrambles opponent's board.  
>  
> 3) Demo/screen shot: My lead developer is out of town until Saturday  
> night, at which time I will be able to send you a few screen shots. I  
> hope this is OK.  
>  
> I hope I have not left anything out. I am available on Tuesday and  
> Wednesday of next week for a conference call between (your time) 1:00  
> pm ? 5:00 pm.  
>  
> Thank you for all of your time. I really appreciate it. Any advise or  
> guidance you can offer takes me one step closer to ensuring an open  
> Tetromino market.  
>  
> Thank you again,  
>  
> Desiree Golen  
>  
>  
>  
> On Thu, Nov 6, 2008 at 2:49 PM, Jeffrey C. Neu, Esq <jneu@jeffreyneu.com>  
> wrote:  
>  
>  
> Maura and Desiree,  
>  
> I would be more than happy to discuss it with you. Why don't you forward  
> the information that you have to me, including a description of your game,  
> and the name associated with it, genre etc., if you have an online demo of  
> the game, all the better (screenshots will do just fine as well), coding  
> language used, any opensource or outside code you have integrated into the  
> game, and the name and related information of the game and company which you  
> are looking to compete with. If you have information of other applications  
> being removed, send that over as well, and we can go from there. After I  
> have looked at the materials, why don't we schedule a conference call, early  
> next week. I don't know what your schedules are like, so let me know. I am  
> fairly flexible.  
>  
> Cheers,  
> Jeff  
>  
> Jeffrey C. Neu, Esq.  
> J. C. Neu and Associates  
> 318 Newman Springs Road  
> Red Bank, New Jersey 07701  
> (732) 978-4053  
> www.jeffreyneu.com  
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>  
>  
>

> Maura Carter wrote:

>  
> J. C. Neu and Associates  
> 318 Newman Springs Road  
> Red Bank, New Jersey 07701  
> (732) 978-4053

> Dear Mr. Neu,

> We are writing to you based on a referral from Eva Galpern, Referral  
> Specialist at Electronics Frontier Foundation in San Francisco. She said  
> that you expressed possible interest in assisting us, via an email contact  
> list through her organization, EFF. We are interested in some legal advice  
> for our company, IXO Online Interactive, a recent start-up in the Mountain  
> View, CA. We are recent Claremont Colleges alums, in the process of  
> creating an application for the iPhone, to post on the Online Applications  
> Store at Apple. We think that we may come into conflict with a third party  
> who claims a to have a copyright on the game we are producing. From our  
> research we have found that this third party has already sent cease and  
> desist letters to several other developers. However, we think this party has  
> only a trademark on the game's original name, but not on the concept or  
> coding we are creating for our version. If there is a copyright conflict  
> between us and the other party, we a  
> re afraid that Apple will remove our application from its store, as it has  
> done so already with several other application developers. We would like to  
> keep our application on the iPhone Application Online Store at Apple for as  
> long as possible, and we would like to be prepared legally in the event that  
> a conflict should occur. Would you be able to assist us with this? I can  
> forward more of our research, related links, and specific details.

> We appreciate your time and look forward to hearing from you.

> Sincerely,

> Maura Carter  
> mauracarter@gmail.com

> and

> Desiree Golen  
> Director, XIO Online Interactive  
> desiree.golen@gmail.com

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